



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-814]

Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 8, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Vandewater International, Inc. v. United States*, Court No. 18-00199, sustaining the U.S. Department of Commerce (Commerce)'s remand redetermination pertaining to the scope ruling for the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China finding steel branch outlets imported by Vandewater International Inc. (Vandewater) to be covered by the order. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's scope ruling, and that Commerce is amending the scope ruling to clarify that a different effective date for suspension of liquidation now applies.

DATES: Applicable September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2517.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2018, Commerce found that Vandewater's steel branch outlets were covered by the order.¹ Commerce's determination was based on the sources enumerated under 19 CFR 351.225(k)(1). Vandewater appealed Commerce's Final Scope Ruling.

On October 16, 2020, the CIT remanded the Final Scope Ruling to Commerce, holding that Commerce's determination that the sources identified in 19 CFR 351.225(k)(1) were dispositive as to whether Vandewater's outlets were covered by the scope of the order was not supported by substantial evidence.² The CIT instructed Commerce to conduct a full scope inquiry on remand and analyze the criteria set forth in 19 CFR 351.225(k)(2).³

In its remand redetermination proceedings, Commerce initiated a full scope inquiry and reopened the record, prior to issuing the final results of redetermination in July 2021.⁴ Commerce also evaluated the criteria set forth in 19 CFR 351.225(k)(2) and continued to find that Vandewater's steel branch outlets are covered by the order.⁵ As a consequence of initiating a scope inquiry on remand, Commerce clarified that it would no longer instruct U.S. Customs and Border Protection (CBP) to suspend or continue to suspend entries that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling. Rather, Commerce indicated that it would instruct CBP (upon a final and conclusive court decision) to suspend or continue to suspend entries of steel branch outlets that entered, or were withdrawn from warehouse, for consumption on or after October 30, 2020 (*i.e.*, the date of initiation of the scope inquiry).⁶ The CIT sustained Commerce's final redetermination.⁷

¹ See Memorandum, "Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Scope Ruling on Vandewater International Inc.'s Steel Branch Outlets," dated September 10, 2018 (Final Scope Ruling).

² See *Vandewater International, Inc. v. United States*, 476 F. Supp. 3d 1357, 1359 (CIT October 16, 2020) (*Remand Order*).

³ *Id.*

⁴ See Commerce's Letter, "Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Scope Inquiry," dated October 30, 2020.

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Vandewater International, Inc. v. United States*, Court No. 18-00199, Slip Op. 20-146, dated July 22, 2021 (Final Results of Redetermination), available at <https://access.trade.gov/Resources/remands/20-146.pdf>.

⁶ *Id.* at 103.

⁷ See *Vandewater International, Inc. v. United States*, Court No. 18-00199, Slip Op. 22-104 (September 8, 2022).

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 8, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s Final Scope Ruling. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Scope Ruling

In accordance with the CIT’s September 8, 2022, final judgment, Commerce has revised the analysis contained in its Final Scope Ruling and continues to find that the scope of the order covers the products addressed in the Final Scope Ruling. However, as summarized above, Commerce has modified its determination with respect to the suspension of liquidation for entries of Vandewater’s steel branch outlets. Specifically, if Commerce’s decision on remand is sustained, we no longer intend to instruct CBP to suspend or continue to suspend entries that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling. Rather, Commerce intends to instruct CBP (upon a final and conclusive court decision) to suspend or continue to suspend entries of steel branch outlets that entered, or were withdrawn from warehouse, for consumption on or after October 30, 2020.¹⁰

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT from liquidating Vandewater’s entries of steel branch outlets covered by the scope of the order entered, or withdrawn from

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁰ See Final Results of Redetermination at 103.

warehouse for consumption, on or after September 10, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

With respect to entries predating October 30, 2020, that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling, Commerce will instruct CBP that, pending any appeals, the cash deposit rate will be zero percent for steel branch outlets imported by Vandewater. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce intends to instruct CBP to lift suspension of liquidation and liquidate such entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 14, 2022.

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

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